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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42849
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2013-6554
v.)	
)	
GILBERTO GARZA JR.,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Gilberto Garza Jr. appeals from his judgment of conviction for grand theft. Mr. Garza pleaded guilty and the district court imposed a unified sentence of fourteen years, with seven years fixed. Mr. Garza appeals and asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On April 26, 2014, officers received an anonymous call indicating that they had information on a theft in Eagle. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) The caller indicated that Jessica Engelhardt and Mr. Garza were involved. (PSI,

p.3.) Mr. Garza was accused of entering Richard Phillips's residence in Eagle and taking numerous household items. (PSI, p.3.)

Mr. Garza explained that around the end of March or beginning of April, 2014, he was referred to a man who had an undisclosed amount of property. (PSI, p.5.) Mr. Garza met with this man and four other individuals and was informed that he would be given property as long as Mr. Garza loaded his truck at the exact time and place and called him when the truck was empty. (PSI, p.5.) Mr. Garza and another individual emptied three truckloads of property into a storage unit. (PSI, p.5.) Mr. Garza was told that a Mr. Phillips had agreed to this arrangement but acknowledged that he still believed that something was "not truthful" about the arrangement. (PSI, p.5.) Mr. Garza acknowledged being in possession of stolen property, but denied entering anyone's property. (PSI, p.6.)

Mr. Garza was charged with one count of burglary and one count of grand theft. (R., pp.75, 166.) He pleaded guilty to the grand theft charge and the State dismissed the burglary charge. (R., p.193.) The district court imposed a unified sentence of fourteen years, with seven years fixed. (R., p.215.) Mr. Garza appealed. (R., p.219.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fourteen years, with seven years fixed, upon Mr. Garza following his plea of guilty to grand theft?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fourteen Years, With Seven Years Fixed, Upon Mr. Garza Following His Plea Of Guilty To Grand Theft

Mr. Garza asserts that, given any view of the facts, his unified sentence of fourteen years, with seven years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Garza does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Garza must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991) (*overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992))). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v.*

Wolfe, 99 Idaho 382, 384 (1978) (*overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001))).

At the sentencing hearing, counsel acknowledged that Mr. Garza had a criminal history, but emphasized that Mr. Garza had made some changes in his life. (Tr., p.190, Ls.23-25.) Mr. Garza had a new child, “and that child means a great deal to him as well as his wife means a great deal to him. He wants to be a family man. He wants to raise his child.” (Tr., p.190, L.23 – p.191, L.3.) Mr. Garza’s son had written a letter talking about Mr. Garza as a father. (Tr., p.191, Ls.3-6.)

Counsel recommended that the court place Mr. Garza on a rider because “it would benefit both [Mr. Garza] and society to have him go through some real intensive programming and make him prove himself to perhaps one day be released on probation.” (Tr., p.191, L.23 – p.192, L.2.) Simply putting Mr. Garza in the penitentiary was “not going to give him a bunch of programming, if he’s got a seven-year fixed sentence . . .” (Tr., p.193, Ls.9-14.) He would end up, “sit[ting] around in a jail cell up until a year before he gets out and then try to get him into programming so that he can try to make parole.” (Tr., p.193, Ls.9-15.) Thus, counsel requested a period of “intensive programming” which would be useful to Mr. Garza. (Tr., p.192, Ls.19-23.)

Based upon the support of his family, his desire to be a good father, and the fact that he acknowledged that intensive programming would be useful, Mr. Garza respectfully submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Garza respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 1st day of October, 2015.

_____/s/
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of October, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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STEVEN J HIPPLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas